IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5518 OF 2005

Smt. Rukminibai Marutrao Tibe ..Petitioner.

Vs.

Shree Vithoba Mandir Trust & Ors. ..Respondents.

...

Mr. M.R. Deshpande for the Petitioner.

CORAM: DR. D.Y. CHANDRACHUD, J.

6th June, 2006.

P.C. :

Not on Board. Mentioned. By consent taken on Board for admission.

2. In the present case, a suit for eviction was decreed by the Trial Court on the ground that the tenant had made a permanent unauthorized construction by increasing the height of the roof to the extent of 7 to 8 ft. Both the Learned Trial Judge as well as the First Appellate Court noted that the permission which was granted by the landlord for changing the tiles of the roof was misused by increasing the height of the walls to the extent of 7 to 8 ft and by using wooden rafters, bricks and cement, thereby altering the nature of the premises. The permission, Exh. 48, was to

change the tiles on the roof. The case of the landlord was found to be established on the evidence, including the oral evidence of the Civil Engineer of the Municipal Corporation. An additional floor has been constructed by increasing the height. The Municipal Corporation acted on the illegal construction by issuing a notice on 14th May, 1992. The tenant categorically admitted the fact that the height of the wall was thus extended. The height which was originally 7 to 8 ft. was increased to between 16 to 17 ft. A permanent and unauthorized alteration has been made to the structure.

3. In view of these circumstances and findings which emerge from the record, the finding of fact by both the Courts below does not suffer from any error of jurisdiction or any such infirmity as would warrant the invocation of the jurisdiction under Article 227 of the Constitution.

4. The order of stay which was to be in force until 20th September, 2005 has not been renewed thereafter and the matter was mentioned before the Court for an extension of stay since execution proceedings have been taken out in the meantime. No

steps have been taken to complete service on the Respondents, though nearly ten months have since elapsed. In any event, having considered the merits of the case, I am of the view that no interference under Article 227 is warranted. The Petition is accordingly dismissed. However, in order to enable the Petitioner to seek his remedies against this judgment and order, there shall be a direction to the effect that the decree for eviction shall not be enforced for a period of eight weeks from today.